



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0748; FRL- 9995-41-Region 1]

Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements for the 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts for the infrastructure requirements for the 2012 fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS), including the interstate transport requirements. We are making findings of failure to submit for the prevention of significant deterioration (PSD) requirements of infrastructure SIPs for the 2012 PM_{2.5} NAAQS. For infrastructure SIP requirements for the 1997 and 2006 PM_{2.5} NAAQS, we are also approving previously unaddressed elements and converting certain previous conditional approvals to full approval. We are also converting to full approvals previous conditional approvals for the 1997 and 2008 ozone, 2008 lead, 2010 sulfur dioxide, and 2010 nitrogen dioxide NAAQS. Finally, EPA is approving five new or amended definitions regarding the NAAQS and Particulate Matter and a state Executive Order regarding consultation by state agencies with local governments. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0748. All documents in the docket are listed on the

<https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA.

EPA requests that if at all possible, you communicate with

the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On February 20, 2019 (84 FR 5020), EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts. This NPRM proposed approval of most elements of a February 9, 2018, submission from the Massachusetts Department of Environmental Protection (MassDEP) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ($\text{PM}_{2.5}$ ¹) National Ambient Air Quality Standard (NAAQS), including the interstate transport requirements for the 2006 and 2012 $\text{PM}_{2.5}$ NAAQS. In the NPRM, we also proposed to approve Massachusetts' 2012 $\text{PM}_{2.5}$ infrastructure SIP submittal for a requirement of prong 3 of CAA section 110(a)(2)(D)(i)(II) related to nonattainment new source review ("NNSR"), based on our proposed approval of revisions to the Commonwealth's NNSR program in a separate, contemporaneous rulemaking. On May 29, 2019, EPA finalized its approval of those NNSR revisions (84 FR 24719). Hence, we may now finalize our approval of Massachusetts' 2012 $\text{PM}_{2.5}$ submittal for prong 3. In addition, the NPRM proposed approval of the interstate transport requirements for the 1997 $\text{PM}_{2.5}$ NAAQS, which the Commonwealth submitted on January 31, 2008. Finally, the NPRM proposed to approve a portion of a Massachusetts SIP submission dated May 14, 2018, which included five new or amended definitions in 310 Code of Massachusetts Regulations (CMR) 7.00.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an "infrastructure SIP." These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting

¹ $\text{PM}_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as "fine" particles.

on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.² Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.³ The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here. EPA received no public comments on its NPRM.

II. Final Action

EPA is approving most of the elements of the infrastructure SIP submitted by Massachusetts on February 9, 2018, for the 2012 PM_{2.5}, including the interstate transport requirements at CAA § 110(a)(2)(D)(i)(I). This submittal also addresses the interstate transport requirements for the 2006 PM_{2.5} NAAQS, which we are likewise approving. In addition, EPA is approving a SIP revision submitted by Massachusetts on January 31, 2008, addressing the interstate transport requirements for the 1997 PM_{2.5} NAAQS.

EPA's action for each element for the 2012 PM_{2.5} NAAQS is stated in Table 1 below.

Table 1: Proposed action on Massachusetts' infrastructure SIP submittal for the 2012 PM_{2.5} NAAQS

Element	2012
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² EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Massachusetts' infrastructure SIP to address the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. 81 FR 93627 (December 21, 2016).

³ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (August 30, 2018).

	PM _{2.5} NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	FS
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	FS
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	FS
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	FS
(J)2: Public notification	A
(J)3: PSD	FS
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve
NA	Not applicable
FS	Finding of failure to submit
+	Not germane to infrastructure SIPs

We are converting to full approval previous conditional approvals for elements A and E(ii) for the 1997 and 2006 PM_{2.5} NAAQS and previous conditional approvals for element A for the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. For the 1997 and 2006 PM_{2.5} NAAQS, we are also approving prong 4 of section

110(a)(2)(D)(i)(II) and the section 115-related (international pollution abatement) requirements of section 110(a)(2)(D)(ii).

We are issuing a finding of failure to submit for the PSD-related requirements of (C)2, (D)2, (D)4, (J)1, and (J)3. Massachusetts, however, is already subject to a Federal Implementation Plan (FIP) for PSD, and so EPA will have no additional FIP obligations under section 110(c) of the Act once this action is finalized as proposed. Furthermore, this action will not subject the Commonwealth to mandatory sanctions.

EPA is also approving, and incorporating into the Massachusetts SIP, definitions of *National Ambient Air Quality Standards (NAAQS) or Federal Ambient Air Quality Standards, PM₁₀ or Particulate Matter 10, PM₁₀ Emissions, PM_{2.5} or Particulate Matter 2.5, and PM_{2.5} Emissions* in 310 CMR 7.00 that Massachusetts included in a submittal to EPA dated May 14, 2018.

EPA is also approving, and incorporating into the Massachusetts SIP, Massachusetts Executive Order 145, *Consultation with Cities & Towns on Administrative Mandates*, effective November 20, 1978, which Massachusetts included for approval in its infrastructure SIP submittal for the 2012 PM_{2.5} NAAQS.

Finally, on March 4, 2019, EPA finalized a rule converting the conditional approval at 40 CFR 52.1119(a)(5) to full approval but inadvertently neglected to remove § 52.1119(a)(5) from the CFR. *See* 84 FR 7299; *see also* 40 CFR 52.1120. In today's action we are remedying that ministerial oversight by removing and reserving § 52.1119(a)(5).

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference Executive Order 145 and the part of 310 CMR 7.00 described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents

generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 17, 2019.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart W – Massachusetts

§ 52.1119 [Amended]

2. Section 52.1119 is amended by removing and reserving paragraphs (a)(3) and (a)(5).

3. Section 52.1120 is amended:

a. In the table in paragraph (c), by revising the entry “310 CMR 7.00” and adding a new state citation for “Executive Order 145” at the end of the table; and

b. In the table in paragraph (e) by adding entries for “Infrastructure SIP for 2012 PM_{2.5} NAAQS,” “Infrastructure SIP for 1997 PM_{2.5} NAAQS,” “Infrastructure SIP for 2006 PM_{2.5} NAAQS,” “Infrastructure SIP for the 1997 Ozone NAAQS,” “Infrastructure SIP for the 2008 Lead NAAQS,” “Infrastructure SIP for the 2008 Ozone NAAQS,” “Infrastructure SIP for the 2010 NO₂ NAAQS,” and “Infrastructure SIP for the 2010 SO₂ NAAQS” at the end of the table.

The revision and additions read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

EPA Approved Massachusetts Regulations

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
**	*	*	*	**
310 CMR 7.00	Definitions	3/9/2018	<p>[Insert date of publication in the <u>Federal Register</u>]</p> <p>[Insert <u>Federal Register</u> citation]</p>	Approved 5 new or updated definitions
**	*	*	*	**
Executive Order 145	Consultation with Cities and Towns on Administrative Mandates	11/20/1978	<p>[Insert date of publication in the <u>Federal Register</u>]</p> <p>[Insert <u>Federal Register</u> citation]</p>	Approval as part of 2012 PM _{2.5} infrastructure SIP

¹ To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) * * *

Massachusetts Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date ³	Explanations
**	*	*	*	**
Infrastructure SIP submittal for 2012 PM _{2.5} NAAQS	Statewide	February 9, 2018	<p>[Insert date of publication in the <u>Federal Register</u>]</p> <p>[Insert <u>Federal Register</u> citation]</p>	<p>Approved with respect to requirements for CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) with the exception of the PSD-related requirements of (C), (D), and (J),.</p> <p>Approval includes interstate transport requirements</p>

Infrastructure SIP submittal for 1997 PM _{2.5} NAAQS	Statewide	January 1, 2008	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval to full approval for CAA section 110(a)(2)(A) and E(ii). Approves interstate transport, visibility protection, and international air pollution abatement requirements of CAA section 110(a)(2)(D)
Infrastructure SIP submittal for 2006 PM _{2.5} NAAQS	Statewide	September 21, 2009	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval to full approval for CAA section 110(a)(2)(A) and E(ii). Approves interstate transport, visibility protection, and international air pollution abatement requirements of CAA section 110(a)(2)(D)
Infrastructure SIP submittal for 1997 Ozone NAAQS	Statewide	February 9, 2018	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval for CAA section 110(a)(2)(A), which was conditionally approved December 21, 2016, to full approval
Infrastructure SIP submittal for 2008 Lead NAAQS	Statewide	February 9, 2018	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval for CAA section 110(a)(2)(A), which was conditionally approved December 21, 2016, to full approval
Infrastructure SIP submittal for 2008 Ozone NAAQS	Statewide	February 9, 2018	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval for CAA section 110(a)(2)(A), which was conditionally approved December 21, 2016, to full approval
Infrastructure SIP submittal for 2010 NO ₂ NAAQS	Statewide	February 9, 2018	<p><u>[Insert date of publication in the Federal Register]</u></p> <p><u>[Insert Federal Register citation]</u></p>	Converts conditional approval for CAA section 110(a)(2)(A), which was conditionally approved December 21, 2016, to full approval

Infrastructure SIP submittal for 2010 SO ₂ NAAQS	Statewide	February 9, 2018	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Converts conditional approval for CAA section 110(a)(2)(A), which was conditionally approved December 21, 2016, to full approval
**	*	*	*	**

³ To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

4. Section 52.1131 is amended by revising the entries for paragraphs (c) and (f) and adding paragraph (h) to read as follows:

§ 52.1131 Control strategy: Particulate matter.

* * * * *

(c) Conditional Approval (satisfied) – Submittal from the Massachusetts Department of Environmental Protection, dated April 4, 2008, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 PM_{2.5} NAAQS is conditionally approved for CAA elements 110(a)(2)(A) and (E)(ii). This conditional approval is contingent upon Massachusetts taking actions to meet requirements of these elements within one year of conditional approval, as committed to in a letter from the state to EPA Region 1 dated July 12, 2012. The Massachusetts Department of Environmental Protection made a submittal to satisfy these conditions on February 9, 2018. EPA approved the submittal and converted the conditional approval to a full approval on **[Insert date of publication in the Federal Register]**.

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(f) Conditional Approval (satisfied) – Submittal from the Massachusetts Department of Environmental Protection, dated September 21, 2009, with supplements submitted on January 13, 2011, and August 19, 2011, to address the Clean Air Act (CAA) infrastructure requirements for the 2006 PM_{2.5} NAAQS is conditionally approved for CAA elements 110(a)(2)(A) and (E)(ii). This conditional approval is contingent upon Massachusetts taking actions to meet requirements of these elements within one year of conditional approval, as committed to in a letter from the state to EPA Region 1 dated July 12, 2012. The Massachusetts Department of Environmental Protection made a submittal to satisfy these conditions on February 9, 2018. EPA approved the submittal and converted the conditional approval to a full approval on **[Insert date of publication in the Federal Register]**.

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(h) Approval - Submittal from the Massachusetts Department of Environmental Protection, dated February 9, 2018, to address the Clean Air Act (CAA) infrastructure requirements for the 2012 PM_{2.5} NAAQS. This submittal satisfies requirements of CAA sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), with the exception of PSD-related requirements of (C),

(D), and (J). Approval includes interstate transport requirements. EPA approved the submittal on **[Insert date of publication in the Federal Register]**.

[FR Doc. 2019-13325 Filed: 6/21/2019 8:45 am; Publication Date: 6/24/2019]